

ORIGINAL

FLORENCE T. NAKAKUNI 2286
United States Attorney
District of Hawaii

HARRY YEE 3790
Assistant United States Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
E-mail: Harry.Yee@usdoj.gov

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 29 2010
at 10 o'clock and 40 min. M.
SUE BEITIA, CLERK

Attorneys for Petitioner
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

C.V.10 00561

DAE BMK

UNITED STATES OF AMERICA,)	CIVIL NO. _____
)	
Petitioner,)	PETITION TO ENFORCE INTERNAL
)	REVENUE SERVICE SUMMONS;
v.)	DECLARATION OF REVENUE OFFICER
)	ALAN OCHIAE; EXHIBIT A
MICHAEL LUKE, AS VICE-PRESIDENT)	
OF AKAMAI CLEANING SERVICES,)	
INC.,)	
)	
Respondent.)	
_____)	

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

The United States of America, through undersigned
counsel, hereby petitions this Court for an order enforcing the
Internal Revenue Service (hereinafter referred to as "IRS")
administrative summons served on Respondent Michael Luke, as

vice-president of Akamai Cleaning Services, Inc., and alleges as follows:

1. This proceeding is brought at the request of the Chief Counsel, IRS, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States.

2. Jurisdiction over this matter is conferred upon this Court pursuant to I.R.C. (26 U.S.C.) §§ 7402(b) and 7604(b) and 28 U.S.C. §§ 1340 and 1345.

3. The proper venue in this matter is the District of Hawaii as the Respondent resides in or may be found within the boundaries of this district.

4. Alan Ochiaie is a Revenue Officer employed in the Small Business/Self-Employed Division of the IRS and is authorized to issue IRS administrative summonses pursuant to I.R.C. § 7602, 26 C.F.R. § 301.7602-1, and IRS Delegation Order No. 4 (as revised). (Declaration of Revenue Officer Alan Ochiaie (hereinafter referred to as "Decl.") at ¶ 1).

5. Revenue Officer Alan Ochiaie is conducting an examination to collect Akamai Cleaning Services, Inc.'s FICA employment taxes for the quarters ended June 30, 2007, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008, and the civil penalty

under Internal Revenue Code (IRC) section 6721(e) for the calendar periods ended December 31, 2005, and December 31, 2006. (Decl. at ¶ 2).

6. Pursuant to this investigation, on July 16, 2010, Revenue Officer Ochiaie issued an administrative summons to the Respondent. The summons directed the Respondent to appear on July 30, 2010, to give testimony and produce for examination certain books, records, papers, and other data as described in the summons. (Decl. at ¶ 4 and Exhibit A).

7. Revenue Officer Alan Ochiaie served the summons on the Respondent on July 19, 2010, by handing an attested copy of the summons to him. (Decl. at ¶ 5 and Ex. A).

8. At the designated date and time, Respondent failed to appear and failed to produce any of the books, records, papers, and other data sought by the summons. Respondent's refusal to satisfy the requirements of the summons continues. (Decl. at ¶ 6).

9. The books, records, papers, and other data sought by the summons are not in the possession of the IRS. (Decl. at ¶ 7).

10. All administrative steps required by the Internal Revenue Code for the issuance of the IRS summons have been followed. (Decl. at ¶ 8).

11. The testimony, books, records, papers, and other data sought by the summons may be relevant to the collection of Akamai Cleaning Services, Inc.'s FICA employment taxes for the quarters ended June 30, 2007, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008, and the civil penalty under IRC section 6721(e) for the calendar periods ended December 31, 2005, and December 31, 2006. (Decl. at ¶ 9).

12. In order to obtain enforcement of a summons, the Petitioner must establish that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS' possession; and (4) satisfies all administrative steps required by the Internal Revenue Code. United States v. Powell, 379 U.S. 48, 57-58, (1964). The Petitioner's burden of satisfying the Powell requirements is a "slight one" that can be met merely by presenting the sworn affidavit of the agent who issued the summons attesting to these facts. United States v. Dynavac, Inc., 6 F.3d 1407, 1414 (9th Cir. 1993); United States v. Gilleran, 992 F.2d 232, 233 (9th Cir. 1993); Crystal v. United States, 172 F.3d 1141, 1144 (9th Cir. 1999).

13. In further support of this Petition and incorporated herein by reference herein, the United States

submits the Declaration of Revenue Officer Alan Ochiaie and the attached exhibit. The Petitioner has met the Powell factors through these documents.

WHEREFORE, Petitioner United States of America respectfully prays as follows:

A. That this Court enter an order directing Respondent to show cause in writing, if any, why he should not comply with and obey the aforementioned IRS administrative summons and every requirement thereof as enumerated in the Declaration of Revenue Officer Alan Ochiaie;

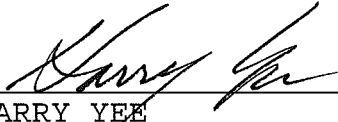
B. That this Court enter an order directing Respondent to fully obey the aforementioned summons and each requirement thereof as enumerated in the Declaration of Revenue Officer Alan Ochiaie, by ordering the attendance, testimony, and production required and called for by the terms of the summons, before Revenue Officer Alan Ochiaie, or any other proper officer or employee of the IRS, at such time and place as may be set by Revenue Officer Ochiaie or any other proper officer or employee of the IRS;

C. That the United States recover its costs incurred in maintaining this action; and

D. That the Court grant such other and further relief
as the Court deems just and proper.

DATED: September 29, 2010, Honolulu, Hawaii.

FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii

By 
HARRY YEE
Assistant U.S. Attorney

Attorneys for Petitioner
UNITED STATES OF AMERICA